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Joint Stakeholders’ Submission by:

Watch Indonesia! e.V.

West Papua Network (WPN)

World Organisation against Torture (OMCT)

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I. Introduction

1. This stakeholder report is a joint submission by the West Papua Network (WPN), Watch Indonesia! and the World Organisation against Torture (OMCT) The report highlights key concerns, trends and significant developments in the human rights situation in Indonesia including a particular focus on the region West Papua¹ between January 2012 and July 2016 in the following areas: *torture and maltreatment; extra-judicial and arbitrary executions; violence against land rights activists; freedom of expression and freedom of peaceful assembly; death penalty; discrimination on the basis of religious belief and sexual orientation; truth finding and dealing with the past, the role of the military; human rights defenders; and indigenous peoples. This report will conclude with a set of recommendations*

2. The WPN is monitoring and documenting the human rights and conflict situation, the legal and institutional framework in Indonesia and supports a peaceful solution to the long lasting conflict in West Papua for more than 20 years. It operates jointly with other organizations in the International Coalition for Papua (ICP).

3. Watch Indonesia! is a Berlin based human rights NGO working since 1991 to address the human rights, democracy and environmental issues in Indonesia and East Timor. It has been actively engaged in doing lobby and advocacy work in Germany, at the EU and the UN level together with its local, national and international partners.

4. Created in 1985, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organizations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 311 affiliated organizations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organizations working for the protection and the promotion of human rights in the world.

II. Violence by Security Forces

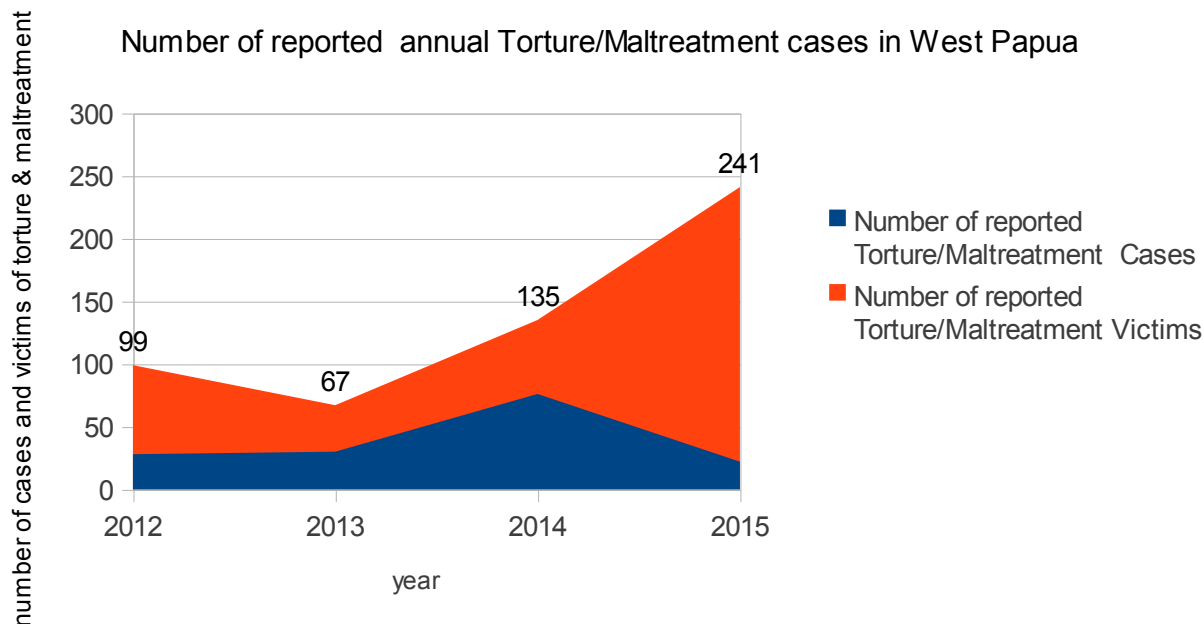
A. Torture and Maltreatment

5. Despite the concerns expressed by the state delegations and other stakeholders during the second universal periodic review (UPR) of Indonesia in 2012, torture and maltreatment remain institutionalized practices commonly applied by military personnel and law-enforcement members in West Papua. The annual number of victims of torture and maltreatment have significantly increased from 99 in 2012 to 241 in 2015, even though the number of torture and maltreatment cases have remained relatively unchanged². The increase of victims between 2012 and 2015 is related to a growing number of cases, in which security forces applied extensive use of force during dispersals of demonstrations (see Table A). This means that there has been an increase in mass arrests and police brutality during demonstrations affecting a large number of people. Such crack downs were reported

¹ The term West Papua refers to the region comprised of the Indonesian easternmost provinces Papua and Papua Barat
² In 2012 ICP counted 28 cases, 2013 an annual number of 30 and 2015 of 22 cases. 2014 was a particularly bad year, in which the annual number of torture and maltreatment cases increased to 76 reported cases.

from various regencies in West Papua like Paniai³, Yahukimo⁴, Tolikara⁵ and Intan Jaya⁶. Furthermore, the pattern of torture cases between 2012 and July 2015 indicate that torture is frequently applied by state agents during all stages of law enforcement. In the majority of cases, police officers applied torture methods during interrogations in order to force confessions or as means of punishment.

Table A



6. The same pattern is reported from other areas in Indonesia, in particular when police officers want to produce confessions by suspected terrorists, drug traffickers or ordinary criminals. A report by the Legal Aid Foundation LBH Jakarta in 2012 cites an expert who says that 98% of juvenile prisoners in Jakarta reported enduring some form of torture while the police tried to solicit a confession or information from them⁷. Between 2012 and 2015, the Asian Human Rights Commission (AHRC), has documented and reported 41 cases of torture and ill-treatment in Indonesia through its Urgent Appeal Desk. The perpetrators of such torture are largely police officers, military personnel, and prison guards.⁸

7. An illustrative case in this context is the case of Siyono, a terrorist suspect, who was caught by Densus 88, a police unit specialized in anti-terrorism measures in April 2016. During his arrest, police officers severely tortured him by kneeling on his body, breaking his ribs resulting in a

³ On December 7, 2014 security forces opened fire at a group of protesters in Paniai. During the operation four senior high school students were killed and 17 other victims seriously injured with bullets.

⁴ Between March 19 and 24, 2015, joint security forces violently dispersed a prayer session in Dekai, Yahukimo Regency. The prayer was organized by the pro-independence movement KNPB with the purpose to collect donations for the victims of cyclone Pam in Vanuatu. During the crack down and the following sweeping operations one man was killed and 38 others were tortured during arrest or detention.

⁵ On July 17, 2015, military members of the Koramil 1702 Military Base opened fire at a group of Papuan GIDI church members, killed a minor and seriously injured ten other protesters with bullets.

⁶ On August 17, 2015, police officers from Detachment C Biak Mobile Brigade unit tortured 15 students of Indonesian Pupils and Students Movement GPMI at Sogopaki Airstrip, Intan Jaya Regency, as they conducted a peaceful protest in which they criticized the regents lack of commitment for the local population.

⁷ LBH Jakarta launched its study report titled “Penelitian Situasi Anak Berhadapan Dengan Hukum dan Persepsi Aparat Penegak Hukum terhadap Proses Anak Berhadapan Dengan Hukum” on 11 April 2012 at a seminar in Jakarta.

⁸ AHRC, INDONESIA: Judicial and legal systems have failed to address torture, ALRC-CWS-31-008-2016, February 15, 2016, <http://www.ahrchk.org/ruleoflawasia.net/news.php?id=ALRC-CWS-008-2016>

perforated lung that ultimately caused his death. Komnas HAM's (Indonesia's NHRI) investigation revealed that the police attempted to hide the facts behind Siyono's death, including suspending his death announcement, giving bribe money and preventing the autopsy from taking place, Komnas HAM chairman Imdadun Rahmat said.

8. During the previous UPR in 2012, various state parties have made recommendations to introduce a clear definition of torture into the Indonesian criminal code (KUHP) which is consistent with the international convention against torture and inhuman or degrading treatment (CAT)⁹. Other state parties recommended the ratification of the conventions optional protocol (OP-CAT), in order to take active measures for the prevention of torture in all national detainment facilities¹⁰. Until September 2016, Indonesia has neither taken legal measures to introduce torture as a crime in its national criminal code KUHP, nor has the government ratified the optional protocol of the convention against torture and inhuman or degrading treatment (OP-CAT).

9. The lack of commitment in combating torture has resulted in widespread impunity for perpetrators, which is particularly high in West Papua. Out of 169 reported cases of torture and maltreatment between 2012 and August 2016, ICP only documented one case in which two law enforcement officers were sentenced to one year and six months in prison for kidnapping, torturing and attempting to execute three students. These sentences are highly disproportionate considering the severity of the criminal offense¹¹. Military members may still only be tried in military courts under Indonesian law, including in cases when the victims were civilians. Most military trials are open for media coverage, but it remains in-transparent whether perpetrators serve their sentences. In its monitoring, the ICP became aware of only one case in which military members were legally prosecuted in 2015.¹²

B. Extra-judicial or Arbitrary Executions

10. The cases of extra-judicial and arbitrary executions between 2012 and July 2016 in West Papua reveal two patterns of unlawful killings. A large number of cases resulted from excessive use of force during security force operations, such as sweepings or crack downs of mass protests¹³. A second pattern of cases shows that security forces still apply silent killings as a strategy to stop political groups, supporting the independence of West Papua through peaceful means. In such cases, the perpetrators particularly targeted the leaders of these civil society organizations.¹⁴

11. The annual number of extra-judicial and arbitrary executions in West Papua between 2012 and 2015 remained relatively constant with 9 cases per year in average¹⁵. In none of the 37 cases of extra-judicial killings between 2012 and July 2016, have the perpetrators been prosecuted.

⁹ See recommendations 108.69 (Republic of Korea), 108.29 (New Zealand)

¹⁰ See recommendations 108.2 (Chile), 108.3 (Austria), 108.4 (Slovenia), 108.5. (Sweden), 108.6. (Switzerland), 108.7 (United Kingdom of Great Britain and Northern Ireland), 108.8 (Turkey), 108.9 (Maldives), 108.10 (Ecuador) 108.26 (France), 108.70 (Denmark)

¹¹ In 2016 Police officers Suherman and Jarius Triyono Damanik from the Jayapura District Police were sentenced to one year and six months imprisonment, after they had kidnapped, heavily tortured and attempted to execute Yafet Awom (19 years), Eliezer Wilhelmus Awom (26 years) and Soleman Yom (24 years) on August 27, 2015.

¹² In 2015, the four soldiers from the military units Yonif 754/ENK and Kodim 1710/Mimika were sentenced for murder of two Papuan men and severe persecution of five Papuans from Kamoro tribe. Makher Mathijs Rehatta was sentenced to twelve years imprisonment, Gergorius Bernadus Geta was sentenced to three years imprisonment, Anshar was sentenced to nine years and Imanuel Imbiri was sentenced to three years imprisonment.

¹³ Major case examples of extra-judicial killings due to excessive use of force by security forces were the Harapan Case on June 4, 2012, the Aimas Case on April 30, 2013, and the the Paniai Case on December 7, 2014

¹⁴ Between 2012 and 2016 especially leaders of the West Papua National Committee (KNPB), a political pro-independence movement which demands the right to political self determination for West Papua by a referendum. KNPB Leaders have repeatedly become victims of extra-judicial executions. Case examples of such executions were the killing of Mako Tabuni on June 14, 2012, Paul Horis on November 4, 2012, Hubertus Mabel on December 16, 2012, Martinus Yohame on August 26, 2014, and Deni Pahabol on March 06, 2015

¹⁵ ICP documented 11 cases of extra-judicial killings in 2012, 6 cases in 2013, 8 cases in 2014 and 10 cases in 2015

Considering the low number of prosecutions between 2012 and July 2016, Indonesia thus failed to implement an effective legal framework to hold perpetrators of torture and extra-judicial killings in West Papua accountable, as various States had recommended during Indonesia's UPR in 2012¹⁶.

12. Out of 37 cases of extra-judicial killings in West Papua between 2012 and July 2016, the national human rights commission Komnas HAM (Indonesia's NHRI) and the Indonesian government only investigated the Paniai Case.¹⁷ The four months investigation by Komnas HAM concluded that there was evidence of gross human rights violations in the Paniai region and recommended that the case be tried before the Human Rights Court.¹⁸ The then Indonesian Coordinating Minister for political, legal and security affairs has set up his own Ad Hoc investigation team on the Paniai case. The team was widely rejected by Papuan civil society, because its establishment lacked any constitutional foundation and its jurisdiction had a strong overlap with the mandate of Komnas HAM as the institution in charge of such cases. Victims particularly rejected the team, because the majority of team members were officials from police and military.¹⁹ One and a half years after the incident, neither the police report has been published nor has the case been dealt with in the Human Rights Court.

13. There is generally a low number of cases filed to the national human rights court since it is mandated to only deal with cases which have been part of a systematic, structured and widespread attack against civilians.²⁰ On paper these criteria are in line with the Rome Statute. But Indonesia's judicial authorities are quite inventive to single out some outstanding cases from a broader pattern. The Paniai incident, for instance, is not an isolated one but reveals a pattern of violence and impunity in the Papua region. Human rights violations, in particular torture and extra-judicial killings have largely remained unpunished leaving victims and their families without justice.

C. Violence against Land Rights Activists

14. During the 2012 UPR, some countries addressed the problem of land conversion and land rights in Indonesia. It was mentioned, that Indonesia loses around two million hectares of forests annually to illegal logging and land conversion.²¹ The latter is nowadays more prevalent since the government's policy to boost economic growth relies mostly on the exploitation of natural resources, particularly on the massive expansion of palm oil plantations. As a result, the number of agrarian conflicts in Indonesia between 2004-2015 has affected about one million families and included about 7 million hectares of land. Alone during 2015, 50% of the land conflicts (252 cases) occurred in the plantation sector.²² The Indonesian Commission on Human Rights (Komnas HAM) reported that it deals with about 7.000 cases and complaints per year, of which 15-20% are agrarian conflicts. These include disputes on land and on access to natural resources in forestry and non-forestry sector.

15. The Indonesian government is aware of this situation.²³ However, concrete steps for conflict

¹⁶ See recommendations 108.95 (Germany), 108.91 (Canada), 108.88 (Slovenia), 108.90 (Australia), 108.96 (Australia), 109.25 (Japan)

¹⁷ The Paniai Case occurred on December 7, 2014, when joint security forces opened fire at a group of people, leading to the death of four Papuan students and serious injuries amongst at least 17 indigenous Papuans

¹⁸ The definition is stated in article 9 of law UU 26/2000 tentang pengadilan Hak Asasi Manusia (UU Pengadilan HAM), the law on human rights courts.

¹⁹ The Jakarta Post: 'Papua Police investigate Paniai shooting, available online: <http://www.thejakartapost.com/news/2014/12/10/papua-police-investigate-paniai-shooting.html>

²⁰ The definition is stated in article 9 of law UU 26/2000 tentang pengadilan Hak Asasi Manusia (UU Pengadilan HAM), the law on human rights courts.

²¹ See A/HRC/21/7

²² Report of the Indonesian organisation for land reform (Konsorsium Pembaruan Agraria/KPA) on 5th January 2016. 'Catatan Akhir Tahun KPA, Reforma Agraria dan Penyelesaian Konflik Agraria Disandera Birokrasi' (<http://www.kpa.or.id/news/publikasi/>)

²³ In its 2012 UPR report the government of Indonesia expressed its awareness of this situation and saw this as a

resolution have not been taken, neither by the previous administrations, nor by the current government. The use of violence still dominates the practice of security forces and companies when it comes to dealing with protests or forced evictions. In 2015, five persons were killed, 39 shot by security forces, 124 tortured and injured and 278 arrested. The violence was mostly committed by state security forces (police and military) and secondly by the companies.²⁴ The rights violations and the criminalization of activists and landowners are justified through the Penal Code (KUHP) articles 160, 170, 310 and 406 on public incitement and destruction of property and other laws.²⁵

III. Freedom of Expression and Peaceful Assembly

A. State Policies and its Impact on Democratic Space

16. The fall of Suharto in 1998 has given the chance for democracy and guarantees of civil liberties to develop. However, in the recent years, Indonesia has suffered from regressions in terms of the guarantee of the right to assembly and the freedom of expression. The enactment of Law 17/2013 on Mass Organizations (ORMAS) has limited the rights of citizens and foreigners to found an organization in the country.²⁶ The law uses reasons such as the fight against terrorism, money laundering, radicalism and violence to shut down organizations. Further, organizations have to declare their sources of income, thereby risking to be named as “foreign agents”. However, therewith, the law severely limited the freedom of assembly as it implements more restrictive control over civil society organizations by requiring e.g. registration and more difficult administrative requirements. Article 2 of this law prohibits organizations whose statutes are not compatible with the state ideology ‘Pancasila’, which includes organizations suspected of spreading atheism, communism and Marxism-Leninism. A similar article has often been used during the dictatorship era to dismiss organizations opposing the government.

17. Another law in conflict with the guarantee of freedom of expression and press freedom is the Law 11/2008 on Information and Electronic Transaction. Since its enactment, the law was used in at least 152 cases to criminalize private persons and activists who expressed their resentment or critics on public figures, such as government officials or district heads, as well as public and private institutions in electronic media, social media or via mobile phone short text messages.²⁷ The articles 27, 28 and 29 of the law are often used to accuse persons of defamation, where in most cases the complainants are politicians, government officials, business people and other influential persons.²⁸ The punishment stipulated in this law is yet heavier than the similar article in the likewise problematic Criminal Code. Therefore, it is urgent to accelerate the revision of the Criminal Code since that review has not experienced any progress since 2005. The defamation article in this law was used for example

challenge ‘to ensure the protection of land rights, including Ulayat rights or Adat rights’ and ‘in this regard, has taken steps to address the challenge and resolve conflicts, such as by accelerating the agrarian reform bill’. See A/HRC/WG.6/13/IDN/1

²⁴ The enactment of the new Law on Plantation Nr. 39/2014 enables companies to form their own security unit, which has caused the increasing role of companies in direct use of violence and rights violations.

²⁵ Further laws commonly used to arrest activists and peasants are the Forestry Law 41/1999, Prevention of Forest Destruction Law 18/2103, Conservation of Natural Resources and the Ecosystem Law 5/1990 and Plantation Law 39/2014

²⁶ This Law was supposed to replace the Law 8/1985, which united many different organizations in one organization in order to control the movement of the civil society organizations, political parties, trade unions, etc.

²⁷ Data collected by Safenet (Southeast Asia Freedom of Expression Network) from 2008-2016

²⁸ The recent case in August 2016 was the criminalization of the human rights activist, Haris Azhar, who revealed on facebook his private conversation with a death convict unfolding the involvement of police and national anti-drugs body in the drug dealings in Indonesia.

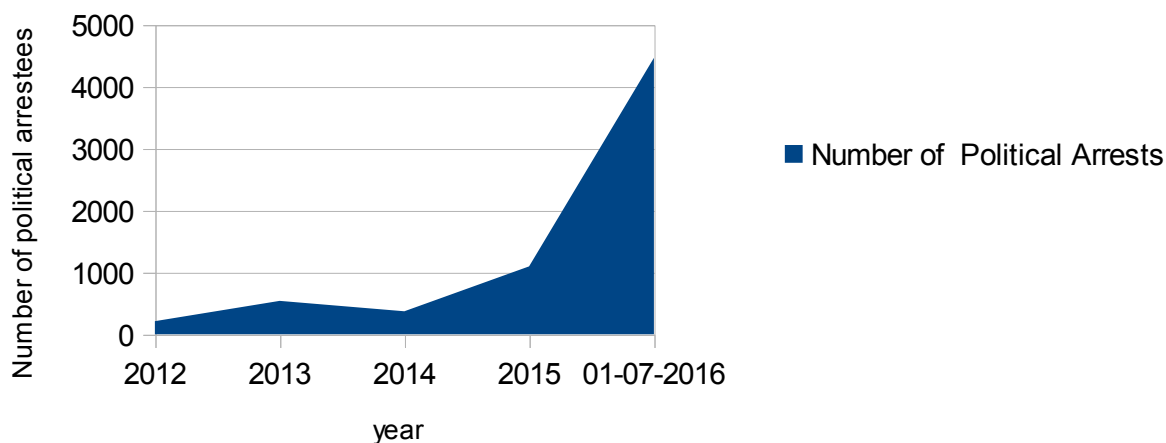
to charge a person who founded a Facebook group considered to promote atheism.²⁹

B. Freedom of Expression and Peaceful Assembly in and related to West Papua

18. The Indonesian government continues to put strong restrictions to freedom of expression and peaceful assembly in West Papua, particularly with regard to demonstrations on politically sensitive issues. In 2016, also Papua-related political demonstrations in other parts of Indonesia faced violent dispersals from security forces. Between 2012 and July 2016 the number of political arrests during demonstrations in West Papua³⁰ has drastically increased. The ICP documented 210 arrests in 2012, 539 arrests in 2013, 1096 arrests in 2015, and peaking in a record high of 4.462 arrests between 01 January and 01 July 2016 (see Table B).

Table B

Number of reported political Arrests



19. The drastic increase of political arrests in 2016 is on the one hand related to an aggravation of the government's security policy in West Papua and on the other hand to an increase of peaceful civil society activity in the region. Mass arrests and forceful dispersals³¹ remain security forces' common response to political demonstrations, ignoring the fact that almost all protests were conducted peacefully and had been registered with local police authorities in accordance with national regulations. In many cases, activists were arbitrarily arrested as they submitted the information letter to the local police station. The Papuan Regional Police has issued a declaration (Maklumat) in 2016,

²⁹ Alexander Aan was an administrator of the Facebook group 'Minang Atheist'. He was firstly acquitted of the blasphemy charge. However, 2012 he was convicted for public disturbance via Facebook and was charged using the Law on Information and Electronic Transaction two and a half year in jail and fine of 100 Mio. Rupiah.

³⁰ The term political arrests refers to arrests which appear to be politically motivated, and can include arrests which happen in political contexts such as demonstrations or places used by politically active organisations and people; arrests of politically active people or their relatives; arrests of people because of their alleged political affiliations; arrests for political activities such as raising a flag or engaging in civil resistance activities, mass arrests, and politically-motivated arrests under manipulated criminal charges.

³¹ Forceful dispersals have frequently occurred during the reporting period, e.g. the KNPB demonstration in Harapan on June 4, 2012, the commemoration in Aimas on April 30, 2013, and the the Paniai Case on December 7, 2014, or the violent dispersal of a Demonstration by Papuan Students in Jakarta on January 1st, 2015, and the KNPB Demonstrations in Jayapura on May 2nd, 2016

in which it categorizes various civil society organizations as separatist organizations³² that are then not allowed to carry out demonstrations and public assemblies in West Papua. This is an attempt to criminalize members and supporters of these civil society groups.

20. The strong limitations on freedom of expression in West Papua are also reflected in the relatively constant high annual number of intimidations and attacks against local journalists³³. Moreover, the Indonesian government continues to restrict access for foreign journalists and international observers to West Papua.³⁴ Between 2012 and 2015 local and foreign journalists working in West Papua or taking coverage on Papua-related political issues in other parts of Indonesia, repeatedly became victims of intimidation, threat, arrest, and in some cases even physical violence. In January 2013, a scheduled Indonesia visit by Mr Frank La Rue, the then Special Rapporteur for freedom of expression and opinion was indefinitely postponed by the Indonesian government after he had expressed his intention to visit West Papua and the Moluccas. The deliberate isolation of West Papua to international observers and foreign journalists is a clear indicator for the Indonesian government's lack of commitment to implement various recommendations made during the past UPR 2012, suggesting a standing invitation to the Special Rapporteur on Freedom of Expression³⁵ and the opening of West Papua to foreign journalists.³⁶

21. During the past four years, the Indonesian government and law agencies have strongly contributed to the shrinking space for the enjoyment of freedom of expression and peaceful assembly in West Papua. In 2013, the Indonesian government changed major parts of the "Law on mass organizations"³⁷ in order to increase state control towards civil society organizations. The law provides state authorities in West Papua, the legal basis for criminalizing civil society leaders and its sympathizers, as explained above. Furthermore, regional police and public prosecutors in West Papua still use the Indonesian Emergency law and particular articles of the Criminal Code to prosecute civil society leaders and political activists. Contrary to several state recommendations during the UPR in 2012³⁸, Articles 106 and 110 of the Indonesian Criminal Code, regulating the crime of treason, continue to be used against activists who had organized peaceful demonstrations.³⁹

³² POLDA Papua listed the following organizations: Komite Nasional Papua Barat (KNPB), Parlemen Rakyat Daerah (PRD), Negara Republik Federal Papua Barat (NRFPPB), Parlemen Nasional West Papua (PNWP), Organisasi Papua Merdeka (OPM), Tentara Pembebasan Nasional (TPN) dan United Liberation Movement for West Papua (ULMWP)

³³ The number of cases between 2012 and 2015 in which local journalists were intimidated, arrested and attacked varied from 12 cases in 2012, over 20 cases in 2013, to 18 cases in 2013. The number of cases decreased in 2015 to 6 reported cases. Between January and July 2016, ICP documented further 6 cases, indicating that the annual amount of cases for 2016 will increase again by the end of the year.

³⁴ If foreign journalists formally apply for a permit to report from West Papua and their application is approved, they will usually be accompanied directly or indirectly by Indonesian intelligence. Many journalists avoid this by entering as tourists. In 2014 and 2015 Indonesian authorities repeatedly took strict measures against foreign journalists, such as the arrest and prosecution of French journalists Charles Dandois and Valentine Bourrat in August 2014, the intimidation of French radio journalist Marie Dumiere in October 2015, the bureaucratic obstruction of French journalist Cyril Payen during the visa application process or the physical attack by police officers on two foreign journalists named Archicco Guilliano and Stephanie Vaessen during the crack down of a demonstration by Papuan students in Jakarta on December 1st, 2015. The cases involving foreign journalists are contradictive to president Jokowi's public promise in May 10, 2015, that West Papua would be opened to foreign journalists.

³⁵ See recommendation 108.55 (Republic of Korea)

³⁶ See recommendation 109.30 (France)

³⁷ "UU No. 17 Tahun 2013 tentang Organisasi Kemasyarakatan" also commonly referred to as "Undang-Undang Ormas"

³⁸ See recommendations 108.116 (Germany), 109.32 (United States of America), 109.33 (Canada)

³⁹ In 2012, ICP documented 22 cases, where political arrestees were processed with articles 106 and 110 of the Indonesian penal code KUHP. The number of cases continuously increased from 25 cases in 2013 to 31 cases in 2014, and slightly decreased in 2015 with a total number of 14 cases.

C. Communism-Phobia in Indonesia

22. On the occasion of the 50th anniversary of the communist purge in 1965 in Indonesia, many civil society organizations, both in the country and outside, organized events to commemorate the killings and demand truth findings.⁴⁰ Since the state of Indonesia has not come to terms with its past until today, the truth is very much contested. In 2015 and 2016 there were about 50 events associated with the 1965 killings, communism and leftist ideas which were forbidden by the government and raided by anti-communist groups as well as by police and military. Gatherings of survivors in several cities were attacked by local anti-communist groups under the observation of the police who did not intervene to stop the violence. This includes a ban of events at the annual Ubud literature festival, public burning of books associated with communism and raids of the screening of the films ‘The Act of Killing’ and ‘The Look of Silence’ (Joshua Oppenheimer) and other related documentary films.⁴¹

IV. Death Penalty

23. In the 2008 and 2012 UPR, some states made recommendation for Indonesia to officially declare a moratorium on the death penalty with a view to abolish it.⁴² Indonesia had welcomed this recommendation. It had halted executions between 2009 and 2012.⁴³ Despite accepting UPR recommendations, Indonesia has made a U-turn since President Joko Widodo took office in October 2014. Not only has President Widodo increased the number of executions, he had also resumed executions for drug traffickers. Up to April 2015, there were at least 121 people on the death row. These include 54 people convicted of drug-related crimes, two convicted on terrorism charges and 65 convicted of murder.⁴⁴

24. In 2015, executions were carried out in January and April 2015, when six and eight persons respectively, were put to death by a firing squad. The first execution in 2016 was carried out in June on four persons out of 14 planned.⁴⁵ The implementation of the death penalty in Indonesia faces several serious problems considering the flawed justice system e.g. forced confessions, denied access to a lawyer, no interpretation for foreign detainees during interrogation and imposition of sentences to children and persons with mental disabilities. This is a violation of the International Covenant on Civil and Political Rights as well as the Convention against Torture, to which Indonesia is a state party.

⁴⁰ The 1965 killings had taken at least 500.000 lives and further hundreds of thousands of arbitrary arrest. This issue has divided the society for decades due to lack of state’s responsibility and the unwillingness of the state to recognize the crimes against humanity. The Komnas HAM published a report on the 1965 killings and stated that it qualified to Crimes against Humanity in the international criminal law.

⁴¹ Safenet (<http://id.safenetvoice.org/>) documented this under the category of the violation of freedom of expression and recorded 52 cases since July 2015-July 2016. This record includes the ban of events related to LGBT rights

⁴² Recommendation and conclusion from Spain, Brazil and Austria. See: A/HRC/21/7

⁴³ However, the president Susilo Bambang Yudhoyon started again the execution in 2013

Report of Amnesty International, 2015, Keadilan yang Cacat Peradilan yang tidak Adil dan Hukuman Mati di Indonesia, addressing the implementation of death penalty and the unfair trials in Indonesia.

⁴⁵ Until June 2016 the Institute for Criminal Justice Reform (ICJR) recorded 26 people charged with death penalty and 17 convicted, (<http://icjr.or.id/update-hukuman-mati-di-indonesia-2016/>)

V. Discrimination

A. Freedom of Religion and Belief

25. The number of attacks against religious minorities has increased over the last ten years and most of the cases remain unresolved until today. Hundreds of families belonging to the Syiah and Ahmadiyah communities still have to live as internally displaced persons in shelters in East Java and East Nusa Tenggara without proper access to health, education and work, including for their children. The members of Yasmin Church in Bogor, West Java, despite the decision of the Supreme Court in 2010, are still not allowed to enter their church.⁴⁶ The main cause of the discrimination against religious minorities in Indonesia is the implementation of the 1965 Blasphemy Law, the 1969 and 2006 ministerial decrees on building houses of worship and religious harmony and the 2008 Joint Ministerial Decree on Ahmadiyah. In cases of attack on individuals or places of worship the police does not offer protection and usually doesn't act impartial.

26. In the second UPR review, at least 20 states expressed their concern to amend or revoke laws and decrees that limit the right to freedom of thought, conscience and religion and to bring these laws into line with international human rights standards.⁴⁷ In the province of Aceh under the Sharia law corporal punishment is applied to crimes such as consuming alcohol, gambling, adultery, premarital sex, same sex relationship, rape and sexual harassment.⁴⁸ Since it came into force in 2015 there have been 108 persons being caned in that year and another 60 persons between January and April 2016.⁴⁹

B. Discrimination of Sexual Minorities in Indonesia

27. The existence of LGBT persons is *de facto* recognized in the Indonesian law, however, through discriminative regulations.⁵⁰ Most of LGBT persons are vulnerable to violence. A study on the situation of the LGBT communities in Indonesia 2013 shows that 89% of the LGBT persons in Indonesia have been victims of violence (psychological, physical, sexual, cultural and economic)⁵¹. Some local regulations, such as the Sharia law in the Province of Aceh, apply corporal punishment to same sex relationships. In 2014, the Indonesian Ulama Council (MUI) issued a fatwa prohibiting LGBT behavior, which has contributed considerably to the public opinion that LGBT acts are equal to sodomy and sexual abuse.⁵² The number of public attacks on LGBT groups and the prohibition of their public activities have been increasing in 2016 after different government officials at the ministry

⁴⁶ The community of the Yasmin Church, in the City of Bogor, West Java is one of many victims among the Indonesian religious minorities which is affected by the implementation of the 2006 Ministerial Decrees on Building Houses of Worship. It requires at least 90 members, support from at least 60 members of the community where the house will be built, recommendation of some institutions, permit from the district head, etc. The city mayor of Bogor has until today not issued the permit for the church despite favorable ruling of the Supreme Court.

⁴⁷ See A/HRC/WG.6/13/IDN/2

⁴⁸ Local bylaw or known as Qanun (Nr.6/2014) is the Islamic penal code, affected not only moslem but also non-moslem citizens.

⁴⁹ Amnesty International; Indonesia: End caning as a form of punishment in Aceh, ASA 21/3853/2016 <https://www.amnesty.org/.../ASA2138532016ENGLISH.pdf>

⁵⁰ The Social Ministry Regulation 8/2012 on Minority Groups and Regulation of Ministry of Home Affairs 27/2014 categorize LGBT people as people with social problems who need state assistance and rehabilitation

⁵¹ The Indonesian organization for LGBT Rights Arus Pelangi Published a book about the stigmatization, violence and discrimination against LGBT people in Indonesia (Arus Pelangi, 2012, *'Menguak stigma, kekerasan, dan diskriminasi pada LGBT di Indonesia'*). January 2016 Arus Pelangi made a public statement responding to discriminative statements of some government officials on mass media (<http://aruspelangi.org/siaran-pers/ Pernyataan-sikap-bersama-terkait-pernyataan-pejabat-publik-di-media-yang-diskriminatif-terhadap-lgbtiq/>)

⁵² Fatwa MUI 57/2014 about Lesbian, Gay, Sodomy and Sexual Abuse. It prohibits LGBT by categorizing it as a form of crime.

level and from educational institutions made public statements prohibiting LGBTs to enter universities and stating that LGBTs are a serious threat to the moral of the nation and constitute a mental illness. This all has given radical groups and local governments across the country the justification to raid and disband activities of LGBT groups. Such actions clearly violate the LGBT community's right on freedom to assembly and right to security.⁵³ In the UPR review 2012, states recommended to eliminate the legislation, which criminalizes sexual relations among persons of the same sex, as well as all legislation, which discriminates on the basis of sexual orientation.⁵⁴

VI. Truth Finding and Dealing with the Past

A. Impunity

28. Impunity has always been a challenge in the democratization process in Indonesia since 1998. Many human rights violations that were committed during the Suharto era remain unresolved until today. The right of the victims and their families to truth, justice, reparation and the guarantee of non-recurrence has until today been denied. The practice of impunity dates back to the 1965 killings which none of the administrations following Suharto have resolved. Due to longstanding discrimination and stigmatization, most of the victims and families live in poverty. Until today, it is not self-evident that victims or survivors open themselves to the public. Some victims' gatherings were violently disbanded by anti-communist groups together with religious groups. In many cases, the police is inactive.

29. Despite the laws on human rights (No. 39/1999) and human rights courts (No. 26/2000) as well as a number of investigations done by Komnas HAM, it is still difficult to open a legal process in cases of past mass atrocities. The justice system lacks political will and is proven not to be impartial enough to conduct further investigations. The unwillingness of the government to resolve the cases is the primary factor. The current administration has promised to resolve seven serious human rights violations, which have previously been investigated by Komnas HAM.⁵⁵ However, no progress is noticeable. The government of Indonesia has signaled its intention to aim at a form of resolution without a legal process. The government has unfortunately not shared a more specific plan.

30. In the 2012 UPR review, several countries raised the issue of impunity, as impunity continues to be an issue for the security forces until today. In fact, Indonesia has not taken measures to deter the use of excessive force and torture by the security forces and widespread impunity.⁵⁶ Indonesia should envisage a continuous and meaningful reform in the justice and security sector to address this serious problem. We further recommend that Indonesia submits its overdue state report to the Committee against Torture.

B. Institutional Reform

31. In the 2012 UPR Review, some countries recommended to continue strengthening the national human rights institutions (Nepal) or to promote and support national human rights institutions (Saudi

⁵³ On February 3rd 2016 the police disband a workshop held by Arus Pelangi, a LGBT organization, in Jakarta according to the complaint of the fundamentalist group Islam Defender Front (FPI/Front Pembela Islam). In the same month February 24th an Islamic boarding school for transgender people Al-Fatah in Yogyakarta was prohibited due to complaints from Islam Jihad Front (Front Jihad Islam /FJI) with the support of the local government.

⁵⁴ See recommendation of Spain A/HRC/WG.6/13/IDN/3 and the statement made by Switzerland.

⁵⁵ These cases are (1) Shooting of students at the University of Trisakti and Semanggi I 1998 and Semanggi II 1999, (2) May Riot 1998, (3) Wasior and Wamena, (4) Forced disappearance 1997-1998, (5) Talangsari, (6) The 1965 killings, (7) Mysterious killing 1982-1985

⁵⁶ See A/HRC/21/7. Timor Leste, Austria, Hungary and Turkey made recommendations on the military and impunity.

Arabia). According to Law No. 26/2000 on Human Rights Courts the National Human Rights Commission, Komnas HAM, has the mandate to do inquiries on gross human rights violations similar to police inquiries in criminal cases in preparation of an Ad Hoc Human Rights Court. In various cases, Komnas HAM wrote comprehensive reports. All of them were rejected by the Attorney General for dubious reasons. The Attorney General alleges to require a prior decision by the National Parliament, whereas the Parliament only wants to recommend the establishment of an Ad Hoc Human Rights Court, if the Attorney General has accepted the statement of claim by Komnas HAM. Since 2000, only two Ad Hoc Human Rights Court were established, namely on abuses in East Timor, and on a massacre against Muslims in Tanjung Priok 1994. Both trials were characterized by weak indictments and a limited number of accused.

32. The Law also provides for standing Human Right Courts. The regulations on the special autonomy of the provinces of Aceh and Papua also mentioned the establishment of human rights courts. Until today, only one trial was held before a temporary human rights court in Makassar, Sulawesi, on the case of Abepura, Papua in 2000. It was not a standing court, but effectively an ad hoc court. Judges came from other places and only spent a few days in Makassar. Only few victims and witnesses were flown in from Papua. After all the suspects were acquitted the case was closed. Victims were neither compensated nor did they experience justice and truth finding by the court. Key parts of Law No. 26/2000 are resembling key parts of the Rome Statute. However, Indonesia did not yet ratify the Statute of the International Criminal Court.

VII. Role of the Military

33. Although the National Police (POLRI) was separated from the Military (TNI) in the first months of the reform era, there is still a lack of definition of these two institutions' different roles until today. While the scope of duties of the Police are centered around the mandate for safety in the interior, the TNI is responsible for protection from external threats. There are overlapping issues such as terrorism, international drug trafficking, human trafficking, natural disasters etc. for which both institutions claim responsibility. Military presences are located in all provinces, but particularly heavy presences can be found in regions of social and political unrest such as West Papua or Central Sulawesi (Palu/Poso).

34. Both institutions have in common that the largest part of their staff is underpaid. This is one of the reasons why police and military officers are engaged in formal and informal, legal and illegal businesses to increase their income. Military-owned enterprises as well as services provided to private entrepreneurs generate extra revenue for the military as well as commanders and soldiers. While about some dozens bigger companies and foundations were separated from the security forces a few years ago in compliance with public demands to do so, police and military officers of all ranks continue to be engaged in side businesses. Quite often, police and military are also on the pay list of plantation, mining or real estate companies working as security guards. This form of relationship easily leads to cases of intimidation towards citizens during land tenure, criminalization and persecution of customary land owners, s. section II C. In West Papua, the military is involved in private businesses, which exacerbates the unproportional omnipresence of military personnel, military projects and corruption there.

35. Activities like extortion of illegal fees and protection money needs to be stopped. Currently, Police and military personnel do not need to fear heavy sentences, even if they violate articles of the Criminal Code. As members of the security forces, the military can act with impunity, since they will not need to appear before a civil court for any violation. All of their crimes, whether done on duty or

not, whether in uniform or plain-clothed will be tried by a military court, usually resulting in relatively light sentences for wrong behavior. Therefore, one of the most pressing reform issues is the need to make military members accountable at civil courts independent from the military and their crimes be cases be handled by prosecutors independent from the military in cases of crimes committed against civilians or relationships with private businesses.

VIII. Human Rights Defenders

36. The number of reported cases of threat, intimidation and physical violence against human rights defenders shows that the West Papua region remains a dangerous and difficult place to conduct human rights work. One of the cases of recent years involved a knife attack against a human rights lawyer⁵⁷. During the past four years, cases of intimidation and attacks against human rights defenders in West Papua rose from three cases in 2012 to five cases in 2014. In 2015, the ICP documented another five cases. All of these cases were reported from Jayapura, Nabire and Wamena, where the network between human rights defenders is relatively well developed. In contrast, cases in remote areas remain unreported due to a lack of infrastructure and access to human rights advocacy networks. International human rights organizations are still banned from officially visiting West Papua.

37. During the UPR of Indonesia in 2012, several state parties recommended the establishment of a save environment and the improvement of protection for human rights defenders in the country, particularly in West Papua.⁵⁸ The frequency of cases in 2014 and 2015 and the hostile working conditions in the field show that the government has not yet improved the protection of human rights defenders in West Papua. Perpetrators have not been held accountable.

38. One of the most prominent cases of human rights violations since reformation started in 1998 is the murder of human rights defender Munir in September 2004. Munir was well-known not only in Indonesia, but also internationally, a.o. awarded with the so-called »Alternative Nobel Prize«, the Right Livelihood Award. Munir was killed by a toxic dose of arsenic. He died on board of an airplane by Indonesia's flag carrier Garuda Indonesia on his way from Singapore to Amsterdam. Then newly elected President Susilo Bambang Yudhono declared to solve the murder of Munir as a test-case "to see whether Indonesia has changed". He installed a fact-finding team. Some suspects were identified, among them Mr. Pollycarpus Budihari Priyanto, a pilot with Garuda Indonesia and seemingly the acting murderer. Pollycarpus was sentenced to 20 years in prison. Only 12 years later, he was released from prison.

39. According to evidence Mr. Pollycarpus did not have any personal reason to kill Munir but must have been ordered or paid by others to commit the murder. Telecommunication data proved, that Pollycarpus communicated frequently with General (ret.) Muchdi Purwoprandjono, one of the leaders of Indonesia's secret service BIN at that time. The court called Mr. Muchdi, but couldn't find convincing proof against him. A colleague of Mr. Muchdi was also called, but never showed up before the court. He was unavailable, meanwhile working at an Indonesian Embassy abroad. Then BIN's superior, Gen. Hendropriyono, whom many see as a suspect, was not called. He is now a close ally of the current President Joko Widodo. The test-case is closed. Neither former President Yudhoyono, nor the Indonesian judiciary were able to put impunity to an end or effectively give protection to other human rights defenders.

⁵⁷ On September the 16 th 2014 at 19:00 hours, Ms Anum Siregar, a human rights lawyer of the Democracy Alliance for Papua (ALDP), was attacked with a knife as she returned to her hotel following a high profile pre-trial hearing against the head of district police Jayawijaya in Wamena.

⁵⁸ See recommendations 108.115(Republic of Korea), 108.117 (Greece), 108.118 (Norway), 108.119 (France)

IX. Indigenous Peoples

40. Local governments keep approving concessions for companies working in the mining, agro and timber business without engaging local indigenous communities into the decision making process. Local governments and relevant state agencies in West Papua commonly act as a facilitator for such companies and show disregard of the principle of Free Prior and Informed Consent (FPIC) and of indigenous peoples' rights over their ancestral land and its resources. This practice accompanied by development programs of the central government, prioritizing food security and economic growth. Particularly the growing number of operating palm oil companies is of serious concern for indigenous communities in West Papua. The ICP network has not learned of a single example in West Papua where the presence of a company has truly contributed to the local indigenous communities prosperity.

41. The employment and recruitment of military and police personnel by mining, logging and palm oil companies for the securement of their investments remains common practice and is an ongoing source of conflict in West Papua. The companies for example pay security force members to intimidate indigenous landowners during negotiations over land or in case of conflict. Local activists reported a large number of such cases between 2012 and July 2016, where the presence of large companies led to an increase in cases of malnutrition⁵⁹ and human rights violations amongst affected indigenous communities⁶⁰.

42. Various countries have made recommendations with regard to the improvement of indigenous peoples' situation in Indonesia during the UPR in 2012. They recommended the ratification of ILO Convention 169⁶¹ and the protection of indigenous peoples' rights in law and practice.⁶² The number of cases of land rights violations, loss of livelihood and violence against indigenous communities during the past four years are a strong signal that Indonesia still lacks true commitment to improve national laws on indigenous people's and monitor its proper implementation.

X. Recommendations

In light of the above-mentioned concerns, we call upon the Working Group of the UPR and the Human Rights Council to make the following recommendations to the Indonesian government:

Concerning Security Forces

- Criminalize and define torture in domestic law in line with the Convention against Torture
- Prosecute and punish perpetrators of torture including military personnel
- Submit the overdue state report to the Committee against Torture
- Invite the Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment to Indonesia including to West Papua

⁵⁹ Examples of such cases were reported from Nabire Regency, where the presence of palm oil companies PT. Nabire Baru, PT. Sariwarna Adi Perkas and timber company PT Sariwarna Unggul Mandiri has effected the indigenous Yerisiam tribe. The investors have destroyed the forest and have not provided compensation to the local people for the loss of livelihood. Culturally important locations including sacred places and sago areas which had been maintained by the Yerisiam for generations have been demolished. Further cases were reported in Merauke regency, due to the implementation of the MIFEE Project (Merauke Integrated Food and Energy Estate)

⁶⁰ Examples of such cases were reported from Kaimana regency (Beating of a Kensi villager by security guard of logging company PT Wana Kayu on February 17, 2016), Nabire regency (local activists documented 15 cases of intimidation and physical violence against indigenous land owners and indigenous laborers between 2011 and 2015, all committed by members of the police mobile brigade who carried out security duties for palm oil company PT. Nabire Baru), Keerom regency (Killing of indigenous laborer by military member at the head office of Palm Oil Company PT. Tandan Sawita Papua in Arso Timur on December 20, 2015) to name only a few

⁶¹ See recommendation 109.7 (Norway). The recommendation was rejected due to the government's disagreement regarding the definition of indigenous peoples in ILO Convention 169.

⁶² See recommendations 108.140 (Iran (Islamic Republic of)) and 109.36 (Norway)

- Investigate extra-judicial killings in West Papua and bring perpetrators to justice
- Refrain from criminalizing land rights activists and stop illegal logging and land conversion

Concerning Freedom of Expression and Peaceful Assembly

- Amend the Law 17/2013 on Mass Organizations (ORMAS) to make it in compliance with Indonesia's obligations under the ICCPR
- Allow NGOs to operate freely by refraining from criminalizing their activities by imposing unnecessary and burdensome administrative procedures
- Guarantee the freedom of expression of critics of the government, including public and private media
- Repel the defamation provision from the Criminal Code
- Guarantee the freedom of assembly and refrain from arresting demonstrators, particularly in West Papua
- Investigate attacks and harassments of journalists reporting on West Papua
- Allow foreign journalists, human rights organisations and UN Special Rapporteurs to visit West Papua
- Refrain from prosecuting human rights activists in West Papua and other regions with treason and other crimes under the Criminal Code
- Support and protect events that aim at commemorating the victims of the Suharto regime and the communist purge in 1965

Concerning the Death Penalty

- Put a moratorium on the death penalty as a first step to abolish the death penalty

Concerning Discrimination

- Protect religious minorities from attacks and harassment
- Allow Christian, Buddhist, Shia, Ahmadiya and other religious minorities to worship in their respective houses of worship
- Protect members of the LGBT community from attacks
- Decriminalize same-sex relationships
- Provide members of the LGBT community with all fundamental rights and opportunities in the public as well as private life without discrimination

Concerning Impunity and the role of national human rights institutions

- Put an end to the institutionalized case forwarding between Komnas HAM, Attorney General and the Parliament that delays action by any of these institutions and open a way for the establishment of ad hoc human rights courts on gross human rights violations in the past
- Establish standing human rights courts according to Law No. 26/2000 and the special autonomy regulations on Aceh and Papua
- Bring perpetrators to justice and provide victims with full redress and restitution

Concerning Role of the Military

- Prohibit business activities of the military as such as well as of its members
- Investigate instances of corruption
- Review military court law to ensure that members of the military are held accountable in civilian courts for acts of torture and killings as well as corruption

Concerning Human Rights Defenders and Indigenous Peoples

- Protect the work of human rights defenders, particularly in West Papua
- Require free prior and informed consent from Indigenous Peoples before exploiting ancestral land and resources, including for development programs

- Prohibit the recruitment of military and police personnel by mining, logging and palm oil or other companies to intimidate Indigenous Peoples during negotiations over land
- Ratify the ILO Convention 169
- Endorse the United Nations Declaration on the Rights of Indigenous Peoples